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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 46517-5-II

COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION II

In re the Dependency of:

M.M., B.B., W.M., and B.H.,

Minor Children.,

On Appeal from Grays Harbor County Superior Court

INTERVENER'S RESPONSE BRIEF

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I. IDENTITY OF INTERVENER/RESPONDENT

Grays Harbor County is the intervener/respondent herein.

II. COUNTER-STATEMENT OF ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- A. Does a person have a property right in a court order that has not be reduced to a final judgment so that due process applies?
- B. Did the appellant receive due process when she was notified of deficiency in her materials supporting payment and given an opportunity to respond?
- C. Did the trial court abuse its discretion by issuing an order that modified an earlier interlocutory order to be consistent with the verbal modification made by the judge who originally issued it?
- D. Has the appellant provided any basis for an award of attorney fees on appeal?

III. COUNTER-STATEMENT OF THE CASE

A. Factual History.

On September 12, 2011, Grays Harbor County Superior Court Judge Gordon Godfrey issued ex parte orders for the payment of attorney and guardian ad litem fees to Tamara Milligan-Darst in four dependency cases in which she allegedly rendered services. CP 28. Judge Godfrey did not review any supporting documentation of Ms. Milligan-Darst's claimed work. *Id.* The Court Administrator for Grays Harbor County was

responsible for preparing the payment vouchers based on the court's order.

Id. The Administrator was responsible for confirming that proper documentation supported the payment request. *Id.*

The Administrator who reviewed Judge Godfrey's orders notified Judge Godfrey that, among other irregularities, there was insufficient documentation of Ms. Milligan-Darst's work to support payment by the County. CP 29. Judge Godfrey concurred with the Administrator's position after reviewing the file and called for a meeting in his chambers with Ms. Milligan-Darst to review the matter. *Id.* At the meeting with Ms. Milligan-Darst, Judge Godfrey informed her that the orders he issued on September 12, 2011 would not be processed for payment by the County until she provided "sufficient documentation" in the form of any affidavit to support the fee request. *Id.* Ms. Milligan-Darst failed to submit the required documentation and the orders were never processed for payment. *Id.*

On June 16, 2014, Grays Harbor County Superior Court Judge David Edwards entered orders in the same four dependency cases voiding the September 12, 2011 orders. CP 3, 18, 33 and 48. The record does not reflect what prompted Judge Edwards to issue these orders. Ms. Milligan-

Darst appealed these orders. CP 69-70, 73-74, 77-78, 81-82.

Subsequent to the filing of the Notices of Appeal, on August 4, 2014, Judge Godfrey signed orders identical to the orders issued by Judge Edwards. CP 4, 19, 34 & 49. Again, the record does not reflect what prompted these orders. Counsel for Ms. Milligan-Darst moved to vacate Judge Godfrey's August 4, 2014 orders, but that motion was denied. CP 11-12, 26-27, 41-42, and 64-65.

B. Procedural History.

As noted above, Ms. Milligan-Darst appealed from Judge Edwards June 16, 2014 orders. Grays Harbor County, which was not a party to the underlying dependency action, or the appeal, filed a motion to intervene in order to file this response brief.

IV. LAW AND ARGUMENT

A. Standard of Review.

The appellant offers no standard by which this Court should review the June 16, 2014 orders. The orders are not final judgments. RAP 2.3 should therefore be applied and the discretionary review standards must be satisfied. Appellant has offered no arguments in support of discretionary review.

However, if this appeal is as a matter of right, the appealed orders are orders vacating a previous order, and thus the standard of review is “abuse of discretion.” *Barr v. McGugan*, 119 Wn.App. 43, 46, 78 P.3d 660 (2003). A “court abuses its discretion when its decision is based on untenable grounds or reasoning.” *Id.*

A “court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *In re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997).

B. The appellant has not established a due process violation based on the June 16, 2014 orders.

“Procedural due process requires that an individual have notice and an opportunity to be heard before he can be deprived of an established property right.” *Veradale Valley Citizens' Planning Comm. v. Bd. of Cnty. Comm'rs of Spokane Cnty.*, 22 Wn.App. 229, 232, 588 P.2d 750 (1978).

The September 12, 2011 orders issued by Judge Godfrey were never reduced to judgments against Grays Harbor County. *See, Bassett v.*

McCarty, 3 Wn.2d 488, 497, 101 P.2d 575 (194) (“Until vitalized by the judgment, [a verdict] has no legal effect upon the rights of the litigants and creates no new claim, distinct from the original claim, by the one party against the other.”) Further, it is undisputed in the record that Judge Godfrey told Ms. Milligan-Darst shortly after the September 12, 2011 orders that they would not be processed for payment unless she submitted sufficient documentation supporting her request. It is undisputed in the record that she never submitted such documentation.

Appellants has offered no authority for the proposition that she had an established property right based on Judge Godfrey’s orders, particularly when it is undisputed that he verbally modified those orders in a meeting with the appellant shortly after they were issued.

She has also cited no authority that due process rights attach to a court order that has not been reduced to a judgment.

However, even if the appellant had some right to due process based on the 2011 orders, it is undisputed that Judge Godfrey met with Ms. Milligan-Darst after the orders were issued and notified her of the deficiency of documentation and explained what was needed to process the payment. CP 13-15. Thus, to the extent due process was even

required, it is undisputed that Ms. Milligan-Darst received notice of the deficiency in the documentation supporting her fee request, and an opportunity to respond to Judge Godfrey's questions. CP 28-29.

C. The trial court did not abuse its discretion by issuing the June 16, 2014 orders.

In *Snyder v. State*, 19 Wn. App. 631, 635-36, 577 P.2d 160 (1978), the Court explained:

The orderly administration of justice requires that the trial court, after having full opportunity to hear, consider, and decide all material questions of the case, will enter formal judgment resolving those questions. In managing the litigation, the trial court must have wide discretion and authority, including the power to issue interlocutory orders, upon every aspect of the case. These orders or rulings may be changed, modified, revised, or eliminated as the case progresses. The court's final say on the merits is subject to revision at any time before final judgment.

Further, a trial Court has discretion to vacate an order under CR 60(b) (11) for "[a]ny other reason justifying relief from the operation of the judgment." "CR 60 gives trial courts a broad measure of equitable power to grant parties relief from judgments or orders." *Vaughn v. Chung*, 119 Wn.2d 273, 280, 830 P.2d 668 (1992). "In considering whether to grant a motion to vacate, *a trial court should exercise its authority liberally, as well as equitably, to the end that substantial rights be*

preserved and justice between the parties be fairly and judiciously done.”

Vaughn v. Chung, supra, 119 Wn.2d at 278-79, quoting from *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289, and *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968) (emphasis added).

In this case, it appears from the limited record that Judge Edwards issued orders that were entirely consistent with Judge Godfrey’s earlier clarifications of the September, 2011 orders. The trial court had the inherent authority to issue the orders to further the orderly administration of justice and the express authority under CR 60(b)(1) because it was apparent that Judge Godfrey’s earlier direction to Ms. Milligan-Darst had not been satisfied. Appellant has not demonstrated that Judge Edwards abused his discretion by issuing the June, 2014 orders.

D. Nothing prevented Judge Edwards from issuing an order in a case in which another judge in Grays Harbor County had previously ruled.

As appellant notes, neither the court rules, nor Washington case law prevented Judge Edwards from issuing the June, 2014 orders solely by virtue of the fact that another Judge of the same court issued the original orders. In *Snyder v. State, supra*, the Court rejected a challenge to an order based in part on an argument that two different superior court judges

considered the motion. 19 Wn. App. At 637. Clearly, in this case, the orders issued by Judge Edwards were consistent with Judge Godfrey's verbal alteration of his September, 2011 orders. CP 13-15. Appellant has not demonstrated that Judge Edwards abused his discretion by issuing the June, 2014 orders.

E. The County takes no position concerning the August 4, 2014 orders issued by Judge Godfrey.

This appeal was filed on July 15, 2014. RAP 7.2(c) prohibits a trial court from changing a "decision then being reviewed by the appellate court" without permission from the appellate court. Grays Harbor County takes no position on the August 4, 2014 orders, or Judge Edward's denial of the motion to vacate those orders. The validity of those orders, and the propriety of the order denying the motion to vacate, is not necessary for this Court to uphold the June 16, 2014 orders issues by Judge Edwards.

F. Appellant has not established applicable law that entitles her to an award of attorney's fees.

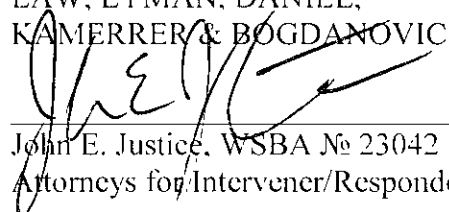
Appellant requests attorney's fees on appeal pursuant to RAP 18.1. First, it is not clear from whom the appellant is requesting fees. As noted, Grays Harbor County was not a party to the underlying action and only intervened in the appeal to protect its interest in not issuing payments to

third party vendors without supporting documentation.

Secondly, RAP 18.1 requires that “applicable law” grants “a party the right to recover reasonable attorney fees or expenses on review . . .” In other words, the party must cite “applicable law” that entitled them to receive an award of fees. *See, Mansour v. King County*, 131 Wn. App. 255, 273, 128 P.3d 1241 (2006) (“Washington courts follow the American rule in not awarding attorney fees as costs unless authorized by contract, statute or recognized equitable exception.”) The appellant must present “argument or the underlying grounds for the grant of fees” under RAP 18.1. *See, e.g., Pruitt v. Douglas County*, 116 Wn. App. 547, 66 P.3d 1111 (2003). A “bald request” for fees is insufficient. *Wilson Court Ltd. Partnership v. Tony Maroni’s, Inc.*, 134 Wn.2d 692, n. 4, 952 P.2d 590 (1988). Appellant has not cited any recognized basis for an award of attorney fees, or explained who would be responsible for paying those fees, and thus her request should be denied.

RESPECTFULLY SUBMITTED this 26th day of June, 2015.

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STATE OF WASHINGTON

BY E
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America and the State of Washington that on the date specified below, I have caused to be served via personal delivery the Brief of Intervener/Respondent Grays Harbor County Superior Court in this matter, upon the Petitioner and her attorney at the address below:

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DATED this 26th day of June, 2015.

Marry Marze
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